Tang Heng Lut v Jawatankuasa Perancang Negeri Pulau Pinang & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-01(A)-454–08 OF 2023
MARIANA YAHYA, HASHIM HAMZAH AND FAIZAH JAMALUDIN JJCA
23 JANUARY 2025

Land Law — Classification of land — Condition of land use — Whether development proposed to be undertaken by landowner accorded with State's Structure Plan — Whether State Planning Authority was therefore not required under Town and Country Planning Act 1976 to call for public hearing or inquiry before deciding to approve landowner's application to re-zone and change category of land use

The appellant, on behalf of himself and 49 other condominium owners, filed a judicial review application ('JRA') to challenge the decision of the first and second respondents to re-zone as well as change the express condition of a piece of land ('the land') neighbouring their condominium complex. The appellant's grievance was that commercial activity caused by a proposed development on the land would adversely affect their right to quiet enjoyment of their properties. The first respondent ('R1') was the Pulau Pinang State Planning Committee established under the Town and Country Planning Act 1976 ('the TCPA') whilst the second respondent ('R2') was the director of the Pulau Pinang Town and Country Planning Department. R1 had approved an application made on behalf of the third respondent ('R3') — which was in the process of buying the land to construct a serviced apartment and wellness centre project — to re-zone the land from 'no zoning' to 'general business zone' and to vary the express condition of the land from 'marina centre' to 'general business'. Under the Penang State structure plan 2030, the land was earmarked for development of business, housing, infrastructure, utilities and public facilities. In the instant appeal against the High Court's dismissal of the JRA, the appellant contended that: (a) it had the locus standi to file the JRA as well as the right under s 124 of the National Land Code ('NLC') to challenge the variation of the land use category and express condition of the land; and (b) R1 should have heard the views of the appellants as neighbouring property owners before deciding to re-zone and vary the express condition of the land.

Held, dismissing the appeal and affirming the High Court's decision:

(1) The appellant, as neighbour to the subject land, unquestionably had the necessary locus standi to seek judicial review of the decision of R1 and

R2 in allowing R3's re-zoning application as he and the persons he represented were adversely affected by the decision. Whether or not the appellant would succeed in the substantive merits of the application was a different issue (see para 29).

(2) The High Court judge correctly held that as the appellant had no registered interest in the subject land he had no legal standing under s 124(1) of the NLC to challenge the variation of the express condition of the subject land by the State Authority. Moreover, the State Authority, for instance, the director of lands and mines or the land administrator was not named as a party by the appellant. The wrong party was brought to court for a challenge under s 124 of the NLC, which was fatal to the appellant's case (see paras 21–22).

(3) There was no variation or alteration of the 2030 structure plan when R1 considered and approved R3's application to re-zone the subject land from 'no zoning' to 'general business zone'. It was undisputed that the proposed re-zoning was consistent with the types of development permitted under the structure plan, namely, 'business development, housing, infrastructure, utilities and public facilities'. As such, R1 did not need to include public participation through a local inquiry or hearing in determining R3's application to re-zone the subject land (see paras 54 & 59–60).

(4) Sections 21(6) and (7) of the TPCA were plain and unambiguous and did not require any public participation in an application to re-zone land. Those sections only applied at the planning permission stage. If Parliament had intended for s 21(6) and (7) to apply in a re-zoning application or process, it would have stated so in no uncertain terms. Therefore, these provisions should not be stretched outside their scope and limit (see paras 75–76 & 79).

[Bahasa Malaysia summary

Perayu, bagi pihak dirinya dan 49 pemilik kondominium lain, memfailkan permohonan semakan kehakiman ('SK') untuk mencabar keputusan responden pertama dan kedua yang mengelaskan semula serta mengubah syarat-syarat nyata untuk sebidang tanah ('tanah') yang bersebelahan dengan kompleks kondominium mereka. Kes perayu adalah bahawa aktiviti komersial yang disebabkan oleh cadangan pembangunan di tanah itu akan menjejaskan hak mereka untuk menikmati harta tanah mereka secara tenang. Responden pertama ('R1') ialah Jawatankuasa Perancangan Negeri Pulau Pinang yang ditubuhkan di bawah Akta Perancangan Bandar dan Desa 1976 ('APBD') manakala responden kedua ('R2') ialah pengarah Jabatan Perancangan Bandar dan Desa Pulau Pinang. R1 telah meluluskan permohonan yang dibuat bagi pihak responden ketiga ('R3') — yang sedang dalam proses membeli tanah untuk membina projek pangsapuri servis dan pusat kesihatan — untuk

mengelaskan semula tanah daripada 'tiada pengelasan' kepada 'zon perniagaan am' dan untuk mengubah syarat-syarat nyata tanah dari 'pusat marina' kepada 'perniagaan am'. Di bawah rancangan struktur negeri Pulau Pinang 2030, tanah itu diperuntukkan untuk pembangunan perniagaan, perumahan, infrastruktur, utiliti dan kemudahan awam. Dalam rayuan ini terhadap penolakan SK oleh Mahkamah Tinggi, perayu menghujahkan bahawa: (a) dia mempunyai locus standi untuk memfailkan SK serta di bawah s 124 Kanun Tanah Negara ('KTN') untuk mencabar penukaran kategori penggunaan tanah dan syarat-syarat nyata tanah; dan (b) R1 sepatutnya mendengar perayu sebagai pemilik harta tanah jiran sebelum memutuskan untuk mengelaskan semula dan mengubah syarat-syarat nyata tanah.

Diputuskan, mengenepikan rayuan dan mengekalkan keputusan Mahkamah Tinggi:

(1) Perayu, sebagai jiran kepada tanah tersebut, tidak dinafikan mempunyai locus standi untuk mendapatkan semakan kehakiman terhadap keputusan R1 dan R2 dalam membenarkan permohonan mengelaskan semula R3 kerana dia dan orang yang diwakilinya terjejas oleh keputusan itu. Sama ada perayu akan berjaya atau tidak dalam merit substantif permohonan adalah isu yang berbeza (lihat perenggan 29).

(2) Hakim Mahkamah Tinggi dengan betul memutuskan bahawa oleh kerana perayu tidak mempunyai kepentingan berdaftar dalam tanah tersebut, dia tidak mempunyai kedudukan undang-undang di bawah s 124(1) KTN untuk menukar syarat-syarat nyata tanah oleh Pihak Berkuasa Negeri. Lebih-lebih lagi Pihak Berkuasa Negeri, sebagai contoh, pengarah tanah dan galian atau pentadbir tanah tidak dinamakan sebagai pihak oleh perayu. Pihak yang salah dibawa ke mahkamah untuk dicabar di bawah s 124 KTN yang menjejaskan kes perayu (lihat perenggan 21–22).

(3) Tiada penukaran atau perubahan pelan struktur 2030 apabila R1 mempertimbangkan dan meluluskan permohonan R3 untuk mengelaskan semula tanah subjek daripada 'tiada pengelasan' kepada 'zon perniagaan am'. Tidak dipertikaikan bahawa cadangan pengelasan semula adalah konsisten dengan jenis pembangunan yang dibenarkan di bawah pelan struktur tersebut, iaitu, 'pembangunan perniagaan, perumahan, infrastruktur, utiliti dan kemudahan awam'. Oleh itu, R1 tidak perlu melibatkan orang awam untuk siasatan tempatan atau pendengaran untuk menentukan permohonan R3 untuk mengelaskan semula tanah tersebut (lihat perenggan 54 & 59–60).

(4) Seksyen 21(6) dan (7) APBD adalah jelas dan tidak memerlukan sebarang penyertaan awam dalam permohonan untuk mengelaskan semula tanah. Seksyen tersebut hanya terpakai pada peringkat kebenaran merancang. Sekiranya Parlimen berhasrat untuk s 21(6) dan (7) untuk

digunakan dalam permohonan atau proses pengelasan semula, ianya akan dinyatakan di dalam peruntukan tersebut dengan jelas. Oleh itu, peruntukan ini tidak boleh dipanjangkan di luar skop dan hadnya (lihat perenggan 75–76 & 79).]

Cases referred to

AJS v JMH and another appeal [2022] 1 MLJ 778, FC (folld)
Badan Peguam Malaysia v Yang Berhormat Perdana Menteri Malaysia, Tan Sri Dato' Hj Mahiaddin bin Mohd Yasin & Anor [2024] 5 MLJ 56, FC (refd)
Datuk Bandar Kuala Lumpur v Perbadanan Pengurusan Trellises & Ors and other appeals [2023] 3 MLJ 829; [2023] 5 CLJ 167, FC (refd)
Diana Nelson Tanoja v PP [2010] 2 MLJ 573, FC (refd)
Julian Chong Sook Keok & Anor v Lee Kim Noor & Anor [2024] 3 MLJ 544, FC (refd)
Lee Lee Cheng (F) v Seow Peng Kwang [1960] 1 MLJ 1, CA (refd)
Lock Wee Kock v Menteri Hal Ehwal Dalam Negeri & Anor [1993] 3 MLJ 691, SC (refd)
Perbadanan Pengurusan Sunrise Garden Kondominium v Sunway City (Penang) Sdn Bhd & Ors and another appeal [2023] 2 MLJ 621, FC (distd)
Tan Kah Fatt & Anor v Tan Ying [2023] 2 MLJ 583, FC (refd)
Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased) [2020] 4 MLJ 721, FC (refd)
Thanimalai & The Government of Malaysia v Lee Ngo Yew [1975] 1 MLJ 125, FC (refd)
The Ordinary Co Sdn Bhd v Lembaga Rayuan Negeri Selangor & Anor [2014] 7 MLJ 705, HC (folld)

Legislation referred to

Courts of Judicature Act 1964 s 81
Criminal Procedure Code s 181(1)
National Land Code s 124, 124(1)
Town and Country Planning Act 1976 ss 4, 4(1), (4), (6), (7), 10(3), 11, 11A, 11B, 18, 18(1), (2), (3), 19, 20, 20A, 21, 21(3), (6), (7), 21A, 21B, 21C, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 31A, Part IV

Appeal from: *Perbadanan Pengurusan One Tanjong & Anor v Jawatankuasa Perancang Negeri Pulau Pinang & Anor (Lone Pine Residence Sdn Bhd (formerly known as Tanjong Marina Resorts Sdn Bhd, intervener)* [2023] MLJU 2254 (High Court, Penang)

Ong Kheng Leong (with Lee Jun Leong, Kenny Chan Kean Li, Li Lim Poh and Benjamin Chwee Yew Keng) (Gibb & Co) for the appellant.
Naizatul Zima bt Tajudin (Pulau Pinang State Legal Advisor's Office) for the respondent.

Hashim Hamzah JCA:

INTRODUCTION

[1] This is the appellant's appeal against the order of the learned High Court judge ('the learned HCJ') dismissing the appellant's judicial review application for an order of certiorari to quash the decision of the first and second respondents in rezoning and changing the express conditions of a piece of land held under Title No HSD PN 7143, Lot No 4658, Bandar Tanjong Bungah, Daerah Timur Laut, Negeri Pulau Pinang ('subject land').

BACKGROUND FACTS

[2] Briefly, the background facts in the present case are as follows.

[3] The appellant is one of the purchasers and currently owns a condominium unit at One Tanjong Condominium ('OTC'). In the judicial review application, the appellant was named in a representative capacity on behalf of himself, Tan Heng Chai and 48 other condominium unit owners in OTC. The OTC is situated adjacent to the subject land.

[4] The first respondent, ie, the State Planning Committee of Pulau Pinang, was established under s 4(1) of the Town and Country Planning Act 1976 (Act 172) ('the TCPA 1976'). The purpose of the first respondent's establishment was, among others, to regulate, control, plan and coordinate all development activities in the State of Pulau Pinang.

[5] The second respondent is the director of the Pulau Pinang Town and Country Planning Department.

[6] The subject land was alienated through a lease to Purerich Realty Sdn Bhd ('PRSB') on 27 November 1995. The express condition of the subject land was 'Marina Centre'. The subject land is under a lease of 60 years, expiring on 27 November 2055.

[7] The current lease owner of the subject land is Province Valley Sdn Bhd ('PVSB'). The third respondent had entered into a sale and purchase agreement dated 11 May 2015 with PVSB to purchase the subject land. The learned HCJ had on 15 May 2023 allowed the third respondent's application to intervene in the judicial review proceeding.

[8] The subject land has had no zoning since it was alienated to PRSB. On 13 November 2021 and 17 November 2021, the second respondent received an application from Beu Tan Architect ('BTA') on behalf of the third

respondent to rezone the subject land from 'no zoning' to 'general business zone' under a proposed development of a serviced apartment and a wellness centre on the subject land.

[9] The third respondent's application was tabled and considered in one of the first respondent's meetings. The local state legislative assembly member was also present at the meeting.

[10] During the meeting, all technical departments, except the Penang City Council's Planning and Development Department, had agreed to the application for the rezoning of the subject land.

[11] It was undisputed that the proposed development of a serviced apartment and a wellness centre on the subject land aligned with the Penang State Structure Plan 2030 ('the 2030 structure plan') as the area applied for was still within the 'Development Area 1, ie, Business Development, Housing, Infrastructure, Utilities and Public Facilities'.

[12] The application was approved by the first respondent on 25 January 2022, subject to the condition that it is only to be used for retirement and health suites. The decision in the first respondent's meeting was informed to the third respondent and BTA on 16 April 2022. On 27 July 2022, the subject land was rezoned as a 'general business zone'.

[13] Dissatisfied, the appellant filed a judicial review application before the High Court below, seeking an order of certiorari to quash the respondents' decision in allowing the rezoning of the subject land from 'no zoning' to 'general business zone' and allowing the variation of the express condition of the subject land from 'marina centre' to 'general business'.

[14] The High Court dismissed the appellant's judicial review application, hence this appeal.

ISSUES

[15] The appellant raised 19 grounds of appeal in the memorandum of appeal. When the appeal was heard before us, the pivotal issues were then narrowed down to the following:

(a) whether the appellant has the right under s 124 of the National Land Code ('the NLC') to challenge the variation of the express condition of the subject land;

(b) whether the appellant has the locus standi to commence this judicial review proceeding against the first and second respondents on the first

and second respondents' decision to allow the third respondent's rezoning application under the TCPA 1976; and

(c) whether the TCPA 1976 contains any provisions that would allow or prohibit a neighbour from participating in the rezoning process of the subject land.

OUR FINDINGS

[16] We have carefully perused the appeal records and heard the submissions by all parties to this appeal. We have reached a unanimous decision. Below are our findings on the issues raised.

FIRST ISSUE

[17] The first issue is whether the appellant has the right under s 124 of the National Land Code ('the NLC') to challenge the variation of the express condition of the subject land.

[18] The appellant submitted that he has the right to challenge the variation of the land use category and the express condition of the subject land under s 124 of the NLC.

[19] On this issue, the learned HCJ, in his judgment, stated that:

> 32. *It bears reiteration that the applicants are merely neighbours of the subject land. They do not hold any registered interest in the subject land. Hence, the applicants are not 'persons having a registered interest in the subject land', whom the state authority must have regard to under* s 124 of the NLC.
>
> 33. In *See Leong Chye @ Sze Leong Chye & Anor v United Overseas Bank (Malaysia) Bhd and another appeal* [2021] 5 MLJ 759 at p 786; [2021] 6 CLJ 650 at p 674, the Federal Court defined 'interest in land' as follows:
>
> > [37] As a start, we think that it is apposite to define the meaning of the words 'title', 'interest' and 'indefeasibility' in the context of land law in Malaysia. The words 'title to land' denotes legal ownership of the land; whilst the words 'interest in land' refers to the statutory interest in registered land which includes a registered lease, charge or easement, statutory lien, and a tenancy exempt from registration. Accordingly, a person who is the registered owner of a piece of land under the issue or register document of title is said to possess legal title to that piece of land. On the other hand, a person taking a lease (a lessee) or a charge of the land (a chargee) acquires only an interest in the land. In this connection, it is also helpful to note the distinction between the words 'issue document of title' and 'register document of title'. The former is the document prepared for issue to the proprietor of any land, being a copy of, or an extract from, the register document of title relating thereto (ss 85(1)(b) and 90 of the NLC); it is the title deed kept by landowners. The latter refers to any document registered, or

prepared for registration, under the NLC and evidencing or, as the case may be, intended to evidence title to land (s 85(1)(a) of the NLC). The register document of title is accessible to the public in order to enable the public to conduct land searches at the land registry The words 'indefeasibility of title or interest' in the Torrens system connotes the measure of conclusiveness given to a title or interest in alienated land on registration of the dealing in statutory form. Once a title or interest is registered, it cannot be set aside except otherwise statutorily provided under sub-s 340(2) of the NLC (see Teo Keang Sood and Khaw Lake Tee, *Land Law in Malaysia, Cases and Commentary* (3rd Ed, LexisNexis 2012) at [4.521]). The register is everything in the sense that the register document of title is conclusive evidence of entries thereon (see s 89 of the NLC).

34. *Given that the applicants do not hold any registered interest in the subject land and by virtue of the proviso to s 124 of the NLC, they are not entitled to challenge the change in the land use category and the express condition of the subject land*. Hence, the applicants' judicial review application herein is a non starter.

35. Since the applicants do not have any registered interest in the subject land, the State Authority is not obliged to entertain them. The applicants have no standing with regard to the amendment of the land use category and the land title condition of the subject land. The applicants' consent or otherwise to the same is not required in law. *Therefore, the applicants have no basis to interfere or challenge the variation of the land use category and the land title condition of the subject land*. The applicants are essentially outsiders or 'busybodies'. (Emphasis added.)

[20] We agree with the learned HCJ. The provision under s 124 of the NLC is patently clear. Specifically, s 124(1) of the NLC states that:

Section 124 Power of State Authority to vary conditions, etc, on application of proprietor

(1) *The proprietor of any alienated land may apply to the State Authority* under this section for —

(a) the alteration of any category of land use to which the land is for the time being subject or, where it is not so subject, for the imposition of any category thereon;

(b) the rescission of any express condition or restriction in interest endorsed on, or referred to in, the document of title thereto, or the removal from that document of the expression 'padi', or any other expression by virtue of which the land is subject for the time being to the implied conditions specified in section 119; or

(ba) the removal from the document of title of the expression 'rubber', 'kampung' or any other expression pertaining to land use, and the imposition of other express conditions pertaining to land use;

(c) *the amendment of any express condition* or restriction in interest endorsed on, or referred to in, the document of title thereto, or the imposition of any new express condition or restriction in interest:

Provided that the State Authority shall not entertain any such application unless it is satisfied with respect to every person or body having a registered interest in the land, or in occupation of any part thereof under any tenancy exempt from registration, either that he has consented thereto or that his consent ought in the circumstances of the case to be dispensed with:

Provided further that the State Authority shall not entertain any such application unless any rent due has been paid and if it relates to express conditions endorsed on the title by virtue of sub-section 92B(2) and sub-sections 92D(2) and (6). (Emphasis added.)

[21] In the present case, it was undisputed that the appellant was a neighbour to the subject land. It was also undisputed that the appellant has no registered interest in the subject land. Hence, we agree with the learned HCJ that under s 124(1) of the NLC, the appellant has no legal standing to initiate an application for judicial review to challenge the variation of the express condition of the subject land by the State Authority.

[22] Moreover, the State Authority, for instance, the director of lands and mines or the land administrator, was not named as a party by the appellant. We also agree with the learned HCJ that the wrong party has been brought to court for a challenge under s 124 of the NLC, which is fatal to the appellant's case.

[23] In our view, the appellant's application for judicial review premised on the challenge to the variation of the express condition of the subject land under s 124 of the NLC, was bound to fail.

[24] We find no error in the learned HCJ's decision on this issue, so we answer the first issue in the negative.

SECOND ISSUE

[25] The second pertinent issue in this appeal is whether the appellant has the locus standi to commence this judicial review proceeding against the first and second respondents on the first and second respondents' decision to allow the third respondent's rezoning application.

[26] To determine the issue of the appellant's locus standi in the present case, it should first be determined whether the appellant is a person who is adversely affected by the decision of the first respondent allowing the third respondent's application for rezoning of the subject land, under the TCPA 1976 when construed as a whole.

[27] Recently, the Federal Court in *Datuk Bandar Kuala Lumpur v Perbadanan Pengurusan Trellises & Ors and other appeals* [2023] 3 MLJ

829; [2023] 5 CLJ 167, speaking through Her Ladyship Nallini Pathmanathan FCJ, held as follows: A

[391] We therefore reiterate that *the issue of locus standi or standing to sue in the instant appeals remains a matter for the court to determine under O 53 r 2(4) by determining whether the respondents are persons who are 'adversely affected' under the relevant legislation*, here the FT Act. Order 53 is not circumscribed, limited or qualified by the Planning Rules 1970, inter alia, because those rules comprising subsidiary legislation are simply not applicable in the context of these appeals. B

[392] As such the respondents are not required to bring themselves within the category of r 5(3). *The issue to be considered is whether the respondents are 'adversely affected' within the purview of the FT Act construed as a whole*. C

[393] This leaves us with the question of *whether the respondents are indeed persons 'adversely affected' by the issuance of the Development Order by the Datuk Bandar under the FT Act*. It is important to emphasise in this context that it is not simply a question of construing O 53 r 2(4) in vacuo and without the benefit of the context in which a person is 'adversely affected'. The words 'adversely affected' in O 53 r 2(4) have to be construed in the context of the particular legislation that is under scrutiny. D

... E

[468] What then is the position in this jurisdiction? First of all regard has to be had to the particular legislation in respect of which the respondents contend that they are 'adversely affected' under O 53, according them standing to sue under the FT Act.

[469] *As we have pointed out at some length in relation to the construction of the FT Act earlier, it is legislation which hones in on public participation as a cornerstone of its purpose and object.* The statutory development plan system provides and ensures public participation in the development of the Federal Territories. There is public participation prior to the *gazetting* of the structure plan and local plan. There is further public participation if there is any amendment or variation to these statutory plans. F G

[470] *This element of public inclusion naturally broadens the categories of persons who may challenge a development order, particularly where the development does not conform to the structure plan.* If the public participated in the implementation of the statutory development plan as the Legislature has seen fit to provide, then indubitably a member of the public can challenge a development which fails to conform to the statutory development plan, if he has a genuine interest. This is particularly so when the local authority gives no reason for varying or altering the features of the structure plan, and does not follow the prescribed statutory provisions for variation or alteration as provided for under the FT Act. H

[471] *Put another way, the words 'adversely affected' in O 53 in the instant appeals has to be construed in the light of the FT Act. The FT Act envisages public participation in the statutory development process at the inception, resulting in the gazetting of the same, followed by further public participation in the event of any alteration or variation of the statutory development plans. Therefore, standing to sue should, in like manner, extend to* I

A *members of the public who can show a genuine interest in the matter*, again in the public interest and with the expertise or knowledge to raise objections in relation to proper planning. *Whether or not the challenge succeeds on the substantive merits is a different issue*. (Emphasis added.)

B **[28]** Similarly, in *Perbadanan Pengurusan Sunrise Garden Kondominium v Sunway City (Penang) Sdn Bhd & Ors and another appeal* [2023] 2 MLJ 621 (FC) (*Sunrise Garden*'s case), Her Ladyship Nallini Pathmanathan FCJ speaking for the Federal Court, held as follows:

C [98] *Another fundamental aspect of the TCPA is the inclusion of the element of public participation in the land planning process*. This element is an integral part of the democratic process which enables the public to require accountability in relation to development in and around where they live. This aspect is statutorily provided for in, inter alia, ss 9, 10, 12, 12A and 13 which requires public participation in the
D drawing up of both structure plans and local plans. (Emphasis added.)

[29] Based on the above authorities, it is abundantly clear that one of the fundamental aspects of the TCPA 1976 is the inclusion of public participation in the land planning process. Therefore, this element of public inclusion
E naturally broadens the categories of individuals who may challenge the decision of the first and second respondents in the exercise of their functions under the act. In our view, the appellant, as a neighbour to the subject land, unquestionably has the necessary locus standi to seek judicial review against the decision of the first and second respondents in allowing the third respondent's
F rezoning application, as they are adversely affected by it. Whether or not the appellant may succeed in the substantive merits of the application is a different issue and will be addressed in the later part of this judgment.

G **[30]** In short, based on the foregoing reasons, we answer the second issue in the affirmative.

THE THIRD ISSUE

H **[31]** The third substantive issue in the present case is whether the TCPA 1976 contains any provision that expressly allows or prohibits the appellant, as a neighbour, from participating in the rezoning process of the subject land.

I **[32]** On this issue, the learned HCJ found that the TCPA 1976 does not require public participation in the rezoning process of the subject land, especially when the 2030 structure plan is already in existence and the type of development applied for, is in compliance with said structure plan.

[33] On this issue, the appellant submitted that the learned HCJ has erred in his findings above because: A

(a) ss 4(4), (6) and (7) of the TCPA 1976 allow the first respondent to cause a local inquiry or hearing to be held in exercising its statutory powers to regulate, control, plan, and coordinate all development activities in the state and the refusal or failure of the first respondent to call for a local inquiry or hearing in the rezoning of the subject land was inconsistent with the object, purpose and fundamental aspect of the TCPA 1976 ('the first point'); and B

(b) s 18(3) of the TCPA 1976 shields the appellant's right to enjoy his land uninterrupted by increased commercial activity on the neighbouring land, and therefore, the application of ss 21(6) and (7) of the TCPA 1976 should not be restricted only at the stage of planning permission ('the second point'). C

D

The first point

[34] With regard to the first point, the appellant submitted that s 4(4), 4(6) and 4(7) of the TCPA 1976 allow the first respondent to cause a local inquiry or hearing to be held in exercising its statutory powers to regulate, control, plan and coordinate all development activities in the state. E

[35] For ease of reference, s 4 of the TCPA 1976 is reproduced below: F

> 4 The State Planning Committee and its functions
>
> (1) There *shall* be established for the State a State Planning Committee consisting of —
>
> (a) a Chairman, being the Menteri Besar or Chief Minister of the State;
>
> (b) a Deputy Chairman, being a member of the State Executive Council, to be appointed by the State Authority; G
>
> (ba) not more than three members to be appointed by the State Authority from amongst the members of the State Executive Council, at least one of whom *shall* be the member responsible for and whose portfolio is related to town and country planning in the State; H
>
> (c) the State Secretary;
>
> (d) the State Director *shall* be the Secretary of the Committee;
>
> (e) the State Director of Lands and Mines;
>
> (f) the Director of the State Economic Planning Unit or an officer responsible for such affairs in the State; I
>
> (g) the State Director of Public Works;
>
> (h) the State Legal Adviser;

A (ha) the State Financial Officer;

(hb) the State Development Officer or an officer responsible for such affairs in the State;

(he) the State Director of Environment or an officer responsible for such affairs
B in the State; and

(i) not more than four other members to be appointed by the State Authority.

(2) A member of the Committee appointed under paragraph 1(b) or (i) *shall*, unless he sooner resigns his office or his appointment is sooner revoked, hold office for
C such period as *may* be specified in his instrument of appointment but *shall* be eligible for reappointment.

(3) A member of the Committee who is not a member of the public service *may* be paid such allowances as the State Authority *may* approve.

(4) The functions of the Committee *shall* be —
D

(a) to promote in the State, within the framework of the national policy, the conservation, use, and development of all lands in the State;

(aa) to regulate, control, plan and co-ordinate all development activities in the State;
E

(b) to advise the State Government, either on its own initiative or in response to a request by the State Government, on matters relating to the conservation, use, and development of land in the State; and

(c) to undertake, assist in, and encourage the collection, maintenance, and
F publication of statistics, bulletins, and monographs, and other publications relating to town and country planning and its methodology.

(5) The Committee *may* from time to time give to any local planning authority directions not inconsistent with the provisions of this Act, and the local planning authority *shall* give effect to such directions.
G

(6) The Committee *may* perform any other functions that are supplemental, incidental, or consequential to any of the functions specified in subsection (4) and do all such things as *may* be necessary or expedient for carrying out its functions under this Act.

H (7) The Committee *may* cause a local inquiry or hearing to be held in or for the purpose of exercising any of its functions under this Act.

(8) The State Director of Town and Country Planning *shall* be the principal adviser to the Committee on matters relating to town and country planning and, as Secretary of the Committee, *shall* be responsible for carrying out the decisions and
I implementing the policies of the Committee; and in or for the purpose of discharging his functions under this subsection, he *may* draw upon the financial, manpower, and other resources of his department. (Emphasis added.)

[36] Insofar as the above provisions are concerned, we agree with the appellant that the first respondent may cause a local inquiry or hearing to be held in the exercise of its functions under the TCPA 1976.

[37] It is pertinent to note that the word 'may' is used in s 4(6) and 4(7) of the TCPA 1976, which ordinarily indicates that it is discretionary and not mandatory for the first respondent to do so.

[38] In the case of *Badan Peguam Malaysia v Yang Berhormat Perdana Menteri Malaysia, Tan Sri Dato' Hj Mahiaddin bin Mohd Yasin & Anor* [2024] 5 MLJ 56 (FC), the Federal Court was to interpret the application of s 81 of the Courts of Judicature Act 1964. His Lordship Abang Iskandar PCA, speaking for the Federal Court, reiterated that:

> ... The word 'may' therein is clearly a *permissive choice*, implying *some degree of discretion* ... (Emphasis added.)

[39] In *Diana Nelson Tanoja v Public Prosecutor* [2010] 2 MLJ 573 (FC), the issue before the Federal Court was whether it was mandatory under s 181(1) of the Criminal Procedure Code for the trial judge to hear the submission from counsel before giving his decision. His Lordship Alauddin PCA (as he then was) speaking for the Federal Court held as follows:

> In our judgment it is not mandatory for the learned trial judge to hear submission from learned counsel before giving his decision.
>
> Section 181(1) of the Criminal Procedure Code provides:
>
> > When the accused is called upon to enter his defence he or his advocate may then open his case, stating the facts or law on which he intends to rely and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses *if any* and after their cross-examination and re-examination *if any* may sum up his case ... (Emphasis added.)
>
> *The word 'may' indicates a discretion. Therefore it could be seen that submission at the end of the defence case is discretionary and not mandatory.* Therefore the learned trial judge could if he wanted to, decide without having the need to hear submission from defence counsel. Submission is not evidence and hence the judgment is not defective. *If the law categorically states that it is not mandatory for counsel to make submission, we can see no reason why it is mandatory for the learned trial judge to hear submission.* What, if learned counsel chooses not to make submission? Is the learned trial judge still obliged to call upon learned counsel to make submission? *If indeed the law intends that the learned trial judge should hear submission than it would say so in no uncertain terms*. (Emphasis added.)

[40] Be that as it may, we are also aware that the word 'may' in a statute should also be construed in the context in which it is used to determine whether it is directory or mandatory.

[41] In the case of *Lock Wee Kock v Menteri Hal Ehwal Dalam Negeri & Anor* [1993] 3 MLJ 691 (SC), Eusoff Chin SCJ (as His Lordship then was) speaking for the Federal Court, held as follows:

> The use of the word 'may' or 'shall' has led to some confusion in the interpretation of provision of a statute. *In ordinary usage, the word 'may' is permissive, and the word 'shall' is imperative.* The courts have always construed these words with reference to the context in which it is used. To find out whether these words are being used in a directory or mandatory sense, the intent of the legislature should be looked into, along with the pertinent circumstances. *If it appears to be the settled intention of the legislature to convey the sense of compulsion, then whether the word 'may' or 'shall' is used, it has the mandatory effect.* (Emphasis added.)

[42] See *Thanimalai & The Government of Malaysia v Lee Ngo Yew* [1975] 1 MLJ 125 (FC).

[43] In the present case, to determine the nature of the word 'may' under s 4(6) and 4(7) of the TCPA 1976, we are of the view that it is crucial to refer to the whole provision of s 4 of the TCPA 1976, which has been reproduced above.

[44] Based on our reading of s 4 of the TCPA 1976 in its whole context, it is apparent that under s 4 of the TCPA 1976, the words 'may' and 'shall' are repeatedly used in different and distinct provisions. It is clear that when the provision refers to the functions of the first respondent under the TCPA 1976, the word 'shall' is used, whereas the word 'may' is used when the provision refers to the exercise of those functions.

[45] In *Lee Lee Cheng (F) v Seow Peng Kwang* [1960] 1 MLJ 1, His Lordship Thomson CJ (as he then was) held that:

> It is axiomatic that *when different words are used in a statute they refer to different things* and this is *particularly so* where the different words are, as here, *used repeatedly*. (Emphasis added.)

[46] To further illustrate, we say that it is one of the mandatory functions of the first respondent to regulate, control, plan, and coordinate all development activities in the state and in so doing, the first respondent has the discretion to perform any other functions that are supplemental, incidental, or consequential thereto as may be necessary or expedient to carry out its functions under the TCPA 1976, including but not limited to, hold a local inquiry or hearing.

[47] Therefore, we hold that under s 4 of the TCPA 1976, 'may' is construed as permissive and discretionary, while 'shall' is construed as imperative and mandatory.

[48] Now that the position is clear, we turn to address the appellant's further submission that the refusal or failure of the first respondent to call for a local inquiry or hearing on the rezoning of the subject land was inconsistent with the object, purpose and fundamental aspect of the TCPA 1976 which is to ensure public participation and accountability.

[49] According to the appellant, this amounted to an irrationality and procedural impropriety which would justify an order for certiorari. In support, the appellant cited *Sunrise Garden*'s case.

[50] However, we found the appellant's argument untenable for the following reasons.

[51] First and foremost, the facts in *Sunrise Garden*'s case can be distinguished from the facts in the present case.

[52] The Federal Court in *Sunrise Garden*'s case found that the drafting, approval and issuance of the special projects guidelines contravened the express provisions of the TCPA 1976 because it amounted to a variation or alteration in material aspects of the structure plan.

[53] This is found by the Federal Court to be in contravention of ss 11, 11A, and 11B of the TCPA 1976, which require that any material variation to the *gazetted* structure plan undergo public awareness and participation. This is one of the main reasons the Federal Court allowed the applicant's judicial review application.

[54] However, in the present case, it was undisputed that the appellant was not challenging the existing and approved 2030 structure plan and the prescribed types of development for the zoning area. It was also undisputed that the proposed rezoning was still consistent with the types of development permitted under the 2030 structure plan, ie, 'development area 1, ie business development, housing, infrastructure, utilities and public facilities'.

[55] In our view, there was no variation or alteration of the 2030 structure plan when the first respondent considered and approved the third respondent's application for rezoning the subject land from 'no zoning' to 'general business zone'.

[56] Secondly, the relevant excerpts from the judgment of Her Ladyship Nallini Pathmanathan FCJ in *Sunrise Garden*'s case are reproduced below:

(B) Object and purpose

[94] *The object and purpose of the TCPA is to control development in relation to the use*

of land. Simply put, the scheme and purpose of the TCPA is *to limit the exercise of landowners' property rights*. It provides for the power *to require landowners and developers to comply with plans and policies of the local planning authority* in relation to development. Development is defined very broadly under the Act in that *it includes almost all activity carried out on, under or over land including change of use* (see encl 93, p 10, para 20).

[95] What, then, are the fundamental elements of the TCPA? In other words what was the legislative intent in not just the ultimate object of the statute but in the principles and mechanisms through which this object is to be achieved? *The fundamental aspects of the TCPA can be distilled from the statute itself*, not by merely reading discrete provisions on their own but by considering the statute as a whole and hence giving full meaning and effect to what was intended by the collective will of Parliament.

[96] In the context of development, regulation is achieved by ensuring that development is in accordance with the development plans for that particular State or area. *The development plan takes the form of the structural plan and ensuing from the structural plan, the local plan. The local plan details how the structural plan is to be implemented in each area and zone*.

[97] Such regulation is evident from the statutory provisions under the TCPA, in particular in s 22 which prohibits the grant of planning permission, if a proposed development is not in conformity with the development plan. This is further affirmed by s 20 which prohibits any development that is contrary to planning permission granted.

[98] Another fundamental aspect of the TCPA is *the inclusion of the element of public participation in the land planning process. This element is an integral part of the democratic process which enables the public to require accountability in relation to development in and around where they live. This aspect is statutorily provided for in, inter alia, ss 9, 10, 12, 12A and 13* which requires public participation *in the drawing up of both structure plans and local plans*.

[99] *In relation to local plans, public participation is required under ss 12A and 13* by way of publicity of the preparation of the draft, publicity of the draft itself and allowing for representations or objections to be made. *The local planning authority has a duty under s 15 to consider the objections or representations, but there is no requirement to hold a local inquiry or hearing. This is at the discretion of the local authority provided under s 14(1)*.

[100] *In relation to structure plans*, public participation takes the form of the following. *Firstly, it is ensured during the preparation and approval process of the structure plan*. Public participation is ensured by way of publicity, that is the draft structure plan must be exhibited to the public to enable them to comment, make suggestions and objections. The policies and strategies are made accessible to the public with the provision of charts, maps, models and video representations. *The public is allowed to object to policies and strategies and to make alternative recommendations*. These representations or objections must be considered by the committee pursuant to s 10(3)(a), and objections must be heard by a sub-committee appointed by the committee under s 10(3)(b). 'Consideration' as provided for in the Act would rationally and necessarily require actual deliberation and a determination or conclusion as to whether the objections are valid or

unmeritorious. *A second opportunity to participate arises during the planning permission approval process where the proposed development is in an area in respect of which no local plan exists*. Where there is no local plan, the local planning authority must give notice pursuant to s 21 (6) to the owners of the neighbouring lands of their right to object to the proposed development. Pursuant to s 22(2)(c) these objections must be considered by the local planning authority when it decides whether to grant the approval. These provisions will be considered in detail in Parts XI(B) and XIII below.

[101] In short, the *final structure plan is premised on the blueprint guide for development with full public participation in relation to use of land, zoning, environmental constraints etc. To that end, the TCPA statutorily ensures that the democratic process of public participation in decision-making is preserved and protected in the structure plan and the local plan*. Ultimately, planning regulation exists to control the development of land in the public interest. (Emphasis added.)

[57] To summarise, the relevant principles which can be distilled from the above judgment are as follows:

(a) the object and purpose of the TCPA 1976 is to control development in relation to the use of land and to limit the exercise of landowners' property rights;

(b) the landowners and developers are required to comply with the plans and policies of the local planning authority concerning development, which include almost all activities carried out on, under or over land, including its change of use;

(c) the inclusion of public participation element in the land planning process, ie, in the drawing up of both structure plans and local plans, which is an integral part of the democratic process enabling the public to require accountability in relation to development in and around where they live;

(d) the final structure plan is premised on the blueprint guide for development with full public participation; and

(e) there are two opportunities for public participation regarding the structure plan. Firstly, during the preparation and approval process of structure plans (see s 10(3) of the TCPA 1976) and secondly, during the approval process of planning permission where the proposed development is located in an area in respect of which no local plan exists (see ss 21(6) and (7) of the TCPA 1976).

[58] In our view, there is nothing in the judgment of the Federal Court in *Sunrise Garden*'s case to suggest that the refusal or failure of the first respondent to call for a local inquiry or hearing on the rezoning of the subject land was inconsistent with the object, purpose and fundamental aspect of the TCPA 1976.

[59] The Federal Court had made it clear that there are stages in which public participation is expressly ensured under the TCPA 1976, and the rezoning process is not one of them. In fact, at the risk of repetition, there was no variation or alteration of the 2030 structure plan in the present case when the first respondent considered and approved the third respondent's application for rezoning the subject land.

[60] For the above reasons, we disagree with the appellant and hold that there was no apparent need for the first respondent to include public participation through a local inquiry or hearing in determining the third respondent's application for rezoning the subject land. We found no merit in the appellant's first point.

The second point

[61] The appellant then submitted that s 21(6) and 21(7) should be read together with s 18(1) and 18(3) of the TCPA 1976. According to the appellant, when read together, these provisions would ensure the appellant's right to enjoy his land and shield the appellant from increased commercial activity at the neighbouring land. The appellant also submitted that s 21(6) and 21(7) of the TCPA 1976 should not, in the circumstances, be restricted in its application to the stage of planning permission.

[62] On this issue, we reproduce the relevant provisions relied on by the appellant for ease of reference.

[63] Part IV of the TCPA 1976 consists of ss 18 to 31A, which are provisions for planning control. Firstly, s 18(1) of the TCPA 1976 states that:

> (1) *No person shall use* or permit to be used *any land or building otherwise than in conformity with the local plan.* (Emphasis added.)

[64] Section 18(2) of the TCPA 1976 is irrelevant to the present appeal. Next, s 18(3) of the TCPA 1976 states that:

> (3) *Subsection (1) shall not affect the continuance of the use of any land* or building *for the purposes for which and to the extent to which* it was *lawfully being used prior to the date when a local plan first came into effect in the area concerned* or, where there has been *a change of local plans* or in a local plan, the date *when the change became effective*. (Emphasis added.)

[65] We also refer to s 21 of the TCPA 1976 concerning applications for planning permission. Section 21(6) of the TCPA 1976 provides that

> (6) *If the proposed development is located in an area in respect of which no local plan exists for the time being*, then, *upon receipt of an application for planning permission*, *or*,

where *directions have been given under subsection (3)*, upon compliance with the directions, *the local planning authority shall, by notice in writing* served on them, *inform the owners of the neighbouring lands of their right to object to the application and to state their grounds of objection* within twenty-one days of the date of service of the notice. (Emphasis added.)

[66] For the sake of completeness, s 21(3) stipulates that:

(3) Where the *development involves the erection of a building*, the *local planning authority may give written directions to the applicant* in respect of *any of the following matters*, that is to say —

(a) the level of the site of the building;

(b) the line of frontage with neighbouring buildings;

(c) the elevations of the building;

(d) the class, design, and appearance of the building;

(e) the setting back of the building to a building line;

(f) access to the land on which the building is to be erected; and

(g) any other matter that the local planning authority considers necessary for purposes of planning. (Emphasis added.)

[67] Lastly, s 21(7) of the TCPA 1976 states that:

(7) *If objections are received pursuant to subsection (6), the local planning authority shall*, within thirty days after the expiry of the period within which objections may be made, *hear* —

(a) *the applicant* for planning permission; and

(b) *any person who has lodged an objection* pursuant to subsection (6) and who, in lodging the objection, *has requested a hearing*. (Emphasis added.)

[68] Upon carefully reading the above provisions, we respectfully found that the appellant's submission on this issue was misconceived for the following reasons.

[69] First and foremost, we found that the appellant had misconstrued the application of s 18(3) of the TCPA 1976. A careful reading of s 18(3) of the TCPA 1976 reveals that it is an exception to the prohibition under s 18(1) of the TCPA 1976.

[70] In other words, even though s 18(1) of the TCPA 1976 stipulates that any land or building shall not be used otherwise than in conformity with the local plan, s 18(3) of the TCPA 1976 allows for the continuance in the use of

any land or building for the purpose and to the extent of which it was lawfully being used before the effective date of a local plan or any changes in the existing local plan.

[71] The above position is well demonstrated in the case of *The Ordinary Co Sdn Bhd v Lembaga Rayuan Negeri Selangor & Anor* [2014] 7 MLJ 705 (HC). In this case, the impugned land was categorised as 'building', and the express condition was 'commercial building'. However, the land has been wrongly zoned as open space under the local plan. The applicant's application for planning permission to vary the use of the land from open space to commercial use was rejected by the local government because it did not conform with the local plan.

[72] Vernon Ong J (as he then was) held, to which we agree, that:

> The NLC stipulates that *every register document of title shall, inter alia, be conclusive evidence of the conditions, restrictions in interest and other provisions subject to which the land is* for the time being held by that person or body (s 89 of the NLC) ...
>
> ... Herein lies the crux of the matter. *There is an obvious conflict between the express condition in the register document of title and the local plan*. The first respondent contends that the use condition in a land does not prevail over the land use zoning under the local plan. The local plan is an administrative act performed by the second respondent under the provisions of the TCPA 1976.
>
> The NLC is a complete code relating to land law in Malaysia. Section 108 of the NLC is patently clear. Any by-law or restriction imposed by any local or planning authority shall to the extent of any inconsistency with the express condition of the land be void.
>
> In *Venkateswara Sdn Bhd v Datuk Bandar Kuala Lumpur* [2001] MLJU 770; [2002] 8 CLJ 997, the High Court held that *where there is a conflict between the provisions of the NLC and local planning laws, the provisions of the NLC shall prevail*. In order to determine whether the provisions of the NLC or the TCPA 1976 should prevail, the court should look to see if there is any expressed provision in the NLC to exclude the application of the TCPA 1976 and vice versa (*Chiu Wing Wa & Ors v Ong Beng Cheng* [1994] 1 MLJ 89 (SC)).
>
> In this instance, the expressed provision of s 108 NLC provides that the express condition in the register document of title shall prevail over any restriction imposed under the local plan. *Further, s 18(3) of the TCPA 1976 also expressly provides that sub-s (1) of s 18 shall not affect the continuance of the use of any land for the purposes for which and to the extent to which it was lawfully being used prior to the date when a local plan first came into effect. Since the land use zoning of Lot 16994 under the local plan conflicts with the land use category and the express condition imposed under the NLC, the respondents when considering the planning application ought to have taken s 18(3) of the TCPA 1976 into account and disregarded the land use zoning under the local plan.* (Emphasis added.)

[73] Regardless of the above, we are of the view that s 18(3) of the TCPA 1976 must be read together with s 18(1) of the same, which is only applicable if a local plan exists. It is important to note that the State of Pulau Pinang currently has no local plan in force, and therefore, s 18(1) and 18(3) of the TCPA 1976 are not applicable in the present case.

[74] Without a local plan, the appellant may object to the proposed development during the application of planning permission stage, as seen under ss 21(6) and (7) of the TCPA 1976.

[75] The wordings used under s 21(6) and (7) are plain and unambiguous. For this reason, we disagree with the appellant that the application of these provisions should not be restricted to the planning permission stage and should be extended to an application for rezoning.

[76] We believe it is not our duty to read words into statute, especially when there is no apparent reason for us to do so. If the Parliament had intended for s 21(6) and (7) of the TCPA 1976 to apply in a rezoning application or process, the Parliament would have stated so in no uncertain terms. Therefore, these provisions should not be stretched outside their scope and limit.

[77] We are guided by the principles explicated by the Federal Court in *AJS v JMH and another appeal* [2022] 1 MLJ 778 (FC), in which Her Ladyship Tengku Maimun CJ, in the majority, adopted the principles and rules of statutory interpretation laid down in *Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2020] 4 MLJ 721 as follows:

> [44] In this context and reverting to statutory interpretation, authorities are replete on the principles or rules of statutory interpretation. *Suffice it that I refer to the judgment of this court in Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)* [2020] 4 MLJ 721; [2020] 7 CLJ 561 where the rules of statutory interpretation is stated thus:
>
> > [30] In our opinion, the rules governing statutory interpretation may be summarised as follows. *First, in construing a statute effect must be given to the object and intent of the Legislature in enacting the statute. Accordingly, the duty of the court is limited to interpreting the words used by the legislature and to give effect to the words used by it. The court will not read words into a statute unless clear reason for it is to be found in the statute itself.* Therefore, in construing any statute, the court will look at the words in the statute and apply the plain and ordinary meaning of the words in the statute. Second, if, however the words employed are not clear, then the court may adopt the purposive approach in construing the meaning of the words used. Section 17A of the Interpretation Acts 1948 and 1967 provides for a purposive approach in the interpretation of statutes. Therefore, where the

words of a statute are unambiguous, plain and clear, they must be given their natural ordinary meaning. *It is not the province of the court to add or subtract any word; the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in the gaps disclosed.* Even if the words in a statute may be ambiguous, the power and duty of the court 'to travel outside them on a voyage of discovery are strictly limited'. Third, the relevant provisions of an enactment *must be read in accordance with the legislative purpose and applies especially where the literal meaning is clear and reflects the purposes of the enactment*. This is done by reference to the words used in the provision; where it becomes necessary to consider every word in each section and give its widest significance. An interpretation which would advance the object and purpose of the enactment must be the prime consideration of the court, to give full meaning and effect of it in the achievement to the declared objective. As such, in taking a purposive approach, the court is prepared to look at much extraneous materials that bears on the background against which the legislation was enacted. It follows that a statute has to be read in the correct context and that as such, the court is permitted to read additional words into a statutory provision where clear reason for doing so are to be found in the statute itself. (Emphasis added.)

[78] See also *Tan Kah Fatt & Anor v Tan Ying* [2023] 2 MLJ 583 (FC) and *Julian Chong Sook Keok & Anor v Lee Kim Noor & Anor* [2024] 3 MLJ 544 (FC).

[79] Reading s 21 of the TCPA 1976 in its entirety and duly considering the object of the TCPA 1976, we found that s 21(6) and (7) of the TCPA 1976 do not statutorily require any involvement of public participation in the application for a rezoning of land.

[80] Consequently, we found no merits in the appellant's second point.

[81] In a nutshell, we found no merits in the two points raised by the appellant regarding the third issue. Accordingly, we found no error in the learned HCJ's decision on this issue.

CONCLUSION

[82] To recapitulate, based on all of the above, it is our findings that:

(a) the appellant does not have the right under s 124 of the NLC to challenge the variation of the express condition of the subject land;

(b) the appellant has the locus standi to commence this judicial review proceeding against the first and second respondents on their decision to allow the third respondent's rezoning application; and

(c) the TCPA 1976 does not contain any provisions that would allow a neighbour to participate in the rezoning process of the subject land.

[83] Therefore, we found no merit in the appellant's appeal. The appeal is dismissed with costs of RM15,000 to first and second respondents, the cost is not subject to allocatur. We also ordered cost of RM15,000 to the third respondent subject to allocatur. The decision of the High Court dated 16 August 2023 is hereby affirmed.

Appeal dismissed and High Court's decision affirmed.

Reported by Ashok Kumar